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Reaching Across the Threshold of the Fourth Amendment— Why *Payton v. New York* Should be Interpreted Broadly

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In *United States v. Allen*, the Second Circuit faced the topic of a circuit split and held that in order to determine the constitutionality of "across the threshold" warrantless arrests, courts need only look to the location of the arrested person.[1] In a landmark case, *Payton v. New York*, the Supreme Court held that several New York statutes, which "authorize[d] police officers to enter a private residence without a warrant" to make a routine felony arrest, were in violation of the Fourth Amendment.[2] While this holding provided some guidance, it left several pivotal questions unanswered and has led to a significant split among the federal circuit courts as to what the proper application of the rule in *Payton* should be.[3] In light of the growing tension between police officers and the public, it is essential that law enforcement officers are given clear guidelines. The Second Circuit was correct in its holding because a broad application of *Payton* encourages law enforcement officers to obtain a warrant or seek other avenues for effecting an arrest, simplifies the necessary criteria for effecting a constitutional across the threshold warrantless arrest, and ensures that Fourth Amendment protections are not violated.[4]

In 2012, four police officers went to the apartment of Dennis B. Allen to arrest him for an assault that occurred a few days before.[5] Upon arriving at Allen's apartment, the officers summoned Allen to the front door and, remaining inside the threshold, Allen spoke calmly with the officers for several minutes.[6] Although Allen insisted that he had not committed any assault, an officer nonetheless informed him that he was under arrest.[7] Allen asked the officers if he could return inside to put on some

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1. United States v. Allen, 813 F.3d 76, 78 (2d Cir. 2016).
2. Payton v. New York, 445 U.S. 573, 574, 576 (1980).
3. *See id.* at 588–89.
4. *Allen*, 813 F.3d at 89.
5. *Id.* at 78.
6. *Id.* at 79.
7. *Id.*

shoes and inform his daughter that he was leaving.[8] The police agreed to Allen's request, but only on the condition that Allen be accompanied by an officer.[9] After following Allen into his house, law enforcement officers reported that they observed drug paraphernalia lying out in the open.[10] Additionally, when instructed to empty his pockets, Allen produced seven bags of marijuana.[11] Allen was subsequently escorted outside, handcuffed, and taken to the police station.[12]

Following Allen's arrest, officers obtained a search warrant based on the drugs in Allen's possession.[13] A search of Allen's apartment revealed a handgun, and Allen was then "rearrested . . . on the federal charge of being a felon in possession of a firearm in violation of 18 U.S.C. § 922(g)(1)."[14] A federal grand jury indicted Allen for the felon in possession charge.[15] After his indictment, Allen moved to suppress both the firearm that the officers found and statements he made following that discovery, "contending that both were fruits of a warrantless in-home arrest in violation of the Fourth Amendment."[16]

After analyzing precedent from the Second Circuit, the Supreme Court, and other federal courts of appeals, the U.S. District Court for the District of Vermont denied Allen's suppression motion and held that Allen's arrest did not violate Fourth Amendment protections.[17] In holding "that the pivotal inquiry is whether law enforcement crossed the threshold of the home in order to effectuate the arrest," the court found that Allen was, indeed, subjected to a warrantless across the threshold arrest because he remained inside his apartment while speaking with police.[18] However, citing *California v. Hodari D.*, the court held that Allen's arrest was constitutional nonetheless because "Allen had submitted to the officer's authority" by asking if he could return inside to put on shoes and speak with his daughter.[19] Thus, despite acknowledging that "the case presented a 'close[ ] question,'" the court determined that the rule in *Payton* should not apply.[20] As a result, "Allen entered a conditional guilty plea to the felon in possession charge, reserving his right to appeal the denial of the suppression motion."[21] After the district court entered judgment against Allen, he filed an appeal.[22]

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8. *Id.*
9. *Id.*
10. *Id.*
11. *Id.*
12. *Id.*
13. *Id.*
14. *Id.*
15. *Id.*
16. *Id.*
17. *Id.* at 80.
18. *Id.* (internal quotations omitted).
19. *Id.*; *see also* 499 U.S. 621, 626 (1991).
20. *Allen*, 813 F.3d at 80 (alteration in original).
21. *Id.*
22. *Id.*

Relying on its own binding precedent set forth in *United States v. Reed*, the Second Circuit vacated Allen's conviction and reversed the denial of the suppression motion.[23] In so doing, the Second Circuit set forth a broad interpretation of the rule in *Payton,* holding that, in the absence of exigent circumstances, when "officers summon a suspect to the door of his home and place [the suspect] under arrest while he remains within his home," such an arrest is unconstitutional.[24] In rejecting the approach taken by other circuits, the court held that the question of whether the officers physically crossed the threshold of the home is irrelevant, and any evaluation of "constructive" or "coercive" entry is unnecessary.[25] The *Allen* court held that when a person is in his home, his Fourth Amendment rights are violated the moment a warrantless arrest occurs, regardless of the show of force demonstrated by the arresting officers.[26] Additionally, the *Allen* court noted that this broad application of the rule in *Payton* "provides clear guidance to law enforcement, avoids undue complexities and perverse incentives to householders not to open their doors to inquiring police officers, and most importantly, ensures that the Fourth Amendment protections, which are at their zenith in the home, are adequately protected."[27]

While some circuits have interpreted the rule in *Payton* narrowly, holding that *Payton* only applies to those instances where an arresting officer physically crosses the threshold into the home of the arrested person, others have interpreted *Payton* much more broadly, holding that "it is the location of the arrested person, and not the arresting agents, that determines whether an arrest occurs within a home."[28] These circuits have justified such a broad interpretation of the *Payton* rule by "rely[ing] on the legal fiction of constructive or coercive entry," arguing that when arresting agents use such force or strength of commands so as "to coerce the occupant [to come] outside of the home, they 'accomplish [ ] the same thing' and achieve the same effect as an actual entry . . . ."[29] To determine if the circumstances amount to such an entry, these courts look to a list of

23. *Id.* at 88–89; *see* 572 F.2d 412, 423 (2d. Cir. 1978) ("To be arrested in the home involves not only the invasion attendant to all arrests but also an invasion of the sanctity of the home. This is simply too substantial an invasion to allow without a warrant, at least in the absence of exigent circumstances, even when it is accomplished under statutory authority and when probable cause is clearly present.").

24. *Allen*, 813 F.3d at 88–89; *see also* Payton v. New York, 445 U.S. 573, 587–88 (1980) (holding that the Fourth Amendment "prohibits the police from making a warrantless and nonconsensual entry into a suspect's home in order to make a routine felony arrest.").

25. *Allen*, 813 F.3d at 88–89.

26. *Id.*

27. *Id.* at 89.

28. *Id.* at 81 (quoting United States v. Reeves, 524 F.3d 1161, 1165 (10th Cir. 2008)) (internal quotation marks omitted); *see* Knight v. Jacobson, 300 F.3d 1272, 1277 (11th Cir. 2002); United States v. Berkowitz, 927 F.2d 1376, 1386–88 (7th Cir. 1991); United States v. Carrion, 809 F.2d 1120, 1128 (5th Cir. 1987); *see also* Fisher v. City of San Jose, 558 F.3d 1069, 1074–75 (9th Cir. 2009) (en banc); United States v. Saari, 272 F.3d 804, 807–08 (6th Cir. 2001).

29. *Allen*, 813 F.3d at 81 (quoting United States v. Morgan, 743 F.2d 1158, 1166 (6th Cir. 1984)).

factors, including the number of police officers present, the time of day, the force of the commands, and whether the officers' weapons were brandished or holstered.[30]

Although the Second Circuit court acknowledged that its holding offers the broadest interpretation of the *Payton* rule so far, the court offered an exhaustive list of rationales for this interpretation.[31] First, the *Allen* court noted that the question of when a person is within his home, outside of his home, or on the threshold of his home, is already a fact-intensive inquiry.[32] Added to this byzantine inquiry is another complicated factor analysis of determining whether authorities' show of force rises to a level of constructive entry sufficient to trigger the *Payton* rule.[33] Additionally, the court noted that, "[a]n arrested person is, and should be, *arrested*: When the police are authorized to take a person into custody, and undertake to do so, they must have the authority to make the arrest effective if the suspect refuses to comply."[34] Thus, any rule that allowed officers to effect a warrantless across the threshold arrest, but then allowed a "person to refuse the arrest simply by closing the door, would . . . undermine the authority of the police" and potentially create violent conflict.[35] Furthermore, the court noted that if such a rule were adopted, "perverse incentives" might arise for homeowners to refuse to open the door to law enforcement.[36] Obviously any rule which discourages cooperation with law enforcement is potentially very problematic, and the court recognized that such practical consequences would likely occur.[37] Finally, the court noted that any command of an officer is a "sufficient exercise of authority to require the suspect to comply," whether or not the command is accompanied by a show of force, and that "[s]uch a command projects the authority of the police into the home, and requires a warrant under *Payton*."[38]

Because the issue at hand is one of constitutional rights, the Second Circuit was correct in holding that the rule in *Payton* should be applied broadly and should encompass all arrests where the arrested person remains in their home, regardless of the show of force demonstrated by police.[39] The solution proposed by the Second Circuit is not unreasonable or unduly burdensome upon law enforcement—the need to effect an arrest of a person within their home is not as great as some would make it seem.[40] Under the rule promulgated by the Second Circuit, officers can still arrest a suspect in any public place or enter the home of a suspect in

30. *Id.* at 88.
31. *See id.* at 81–82.
32. *Id.* at 88.
33. *Id.*
34. *Id.* at 86 (emphasis in original).
35. *Id.*
36. *See id.* at 89.
37. *Id.* at 87 (quoting United States v. Reed, 572 F.2d 412, 423 n.9 (2d Cir. 1978)).
38. *Id.* at 88.
39. *See id.* at 88–89.
40. *Id.* at 87.

order to effect an arrest under "exigent circumstances."[41] The Supreme Court has upheld exigent circumstances exceptions to the warrant requirement when police officers were in "hot pursuit of a fleeing felon," when officers reasonably believed that the suspect was destroying evidence, and when there was an ongoing emergency, such as a house fire.[42] Additionally, it is important to note that it is rarely the case that officers are unable to procure a warrant, but rather, that officers choose to effect an across the threshold warrantless arrest to save the extra effort and time that procuring a warrant takes.[43] The Second Circuit noted this, pointing out that "[d]espite having nearly two days and ample probable cause, the officers did not seek a warrant for Allen's arrest."[44] Furthermore, advances in technology and the availability of qualified magistrates at virtually all hours of the day has made the process of procuring a warrant substantially more efficient. As the Supreme Court and the Second Circuit have noted, it is critical that the added burden placed on law enforcement of requiring a warrant be viewed in the proper perspective—when an agent of the government attempts to violate the sanctity of a man's home, the simple requirement of obtaining a warrant from an unbiased third-party does not seem too high.[45] The Supreme Court has long held that "the warrant procedure minimizes the danger of needless intrusions" into the sanctity of a man's home, and thus, should be properly utilized to ensure that probable cause exists before depriving a person of their individual liberties.[46]

Although seeking a warrant is certainly an added burden on law enforcement, the tensions existing between the police and the public in today's society demand that clarity and efficiency be brought to police procedure. By providing police with clear, black and white rules, there is no longer a need for police officers to delve into tricky questions of fact and circumstance. The Second Circuit's rule protects law enforcement officers from being put in the position of making judgment calls and eliminates the inconsistencies created by basing the constitutionality of an arrest on minute details, such as the time of day or the force of an officer's statements. By simply holding that any warrantless arrest of a person while the person is in their home is unconstitutional, the gray areas

41. *Id.*

42. *Id.* at 83 n.9; *see* Michigan v. Tyler, 436 U.S. 499, 509 (1978) ("A burning building clearly presents an exigency of sufficient proportions to render a warrantless entry 'reasonable.'"); United States v. Santana, 427 U.S. 38, 42–43 (1976) ("we have recognized the right of police . . . to make a warrantless entry to arrest . . . . [in cases] involving a true 'hot pursuit' . . . ."); Warden v. Hayden, 387 U.S. 294, 298–99 (1967) (stating that police "acted reasonably when they entered the house and began to search for" an armed robber); Schmerber v. California, 384 U.S. 757, 770–71 (1966) (stating that officer "reasonably [ ] believed that he was confronted with an emergency, in which the delay necessary to obtain a warrant, under the circumstances, threated 'the destruction of evidence.'") (citation omitted).

43. *See Allen*, 813 F.3d at 78.

44. *Id.*

45. *See* Payton v. New York, 445 U.S. 573, 588–89 (1980); *Allen*, 813 F.3d at 81.

46. *Payton*, 445 U.S. at 586.

between permissible and impermissible conduct become much more clear. The case-by-case method of evaluating an officer's conduct against standards for coercive or constructive entry leaves too much ambiguity in the law. The Supreme Court, while examining the bounds of the Fourth Amendment's protection in *New York v. Belton*, described the problem that often arises when complex tests are used to determine the constitutionality of actions on a case-by-case basis.[47] In *Belton*, the Supreme Court held that a clear rule was necessary in order to ensure that the lawfulness of a search did not turn on "'[a] highly sophisticated set of rules, qualified by all sorts of ifs, ands, and buts and requiring the drawing of subtle nuances and hairline distinctions.'"[48] Likewise, the same is true of warrantless arrests; the determination of constructive or coercive entry requires too much of law enforcement officers and does not present individuals with a clear picture of their rights. In order to avoid heated confrontations, confusion, and undue influence, it is essential that both law enforcement and citizens are aware of what qualifies as a constitutional arrest.

Furthermore, although many courts have held that *Payton* prohibits only warrantless entry into the home and that a broad interpretation is inconsistent with the text of the Fourth Amendment, that conclusion fails when the *Payton* rule is viewed in practical terms.[49] As in *Allen*, individuals who open their front door to speak with inquiring police officers rarely expect to be subsequently arrested and are often unprepared to leave their home; consequently, such individuals must return inside.[50] At this point, having already been placed under arrest, individuals are often escorted into their homes by police officers, allowing the officers physical entry and the opportunity to seize any and all evidence that is in plain view.[51] In *Allen,* the arrest was made without physical entry, but the constitutional ramifications remain the same: the arresting officers were given warrantless entry into Allen's residence and were able to search a limited area without obtaining a warrant.[52] This "'physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed,'" and no rule which allows for such an entry to be effected, even in a roundabout way, should stand.[53]

Moreover, the Second Circuit's holding is a clear step towards a uniform rule. Circuit splits such as this allow for the Constitution to take on

47. New York v. Belton, 453 U.S. 454, 458 (1981), *abrogated by* Davis v. United States, 564 U.S. 229 (2011).

48. *Id.* (quoting Wayne R. LaFave, *"Case-By-Case Adjudication" versus "Standardized Procedures": The Robinson Dilemma*, 1974 S. CT. REV. 127, 142).

49. *Cf.*, *e.g.*, United States v. Berkowitz, 927 F.2d 1376, 1386 (7th Cir. 1991); United States v. Carrion, 809 F.2d 1120, 1128 (5th Cir. 1987); McKinney v. George, 726 F.2d 1183, 1188 (7th Cir. 1984); United States v. Whitten, 706 F.2d 1000, 1015 (9th Cir. 1983).

50. *See Allen*, 813 F.3d at 79.

51. *See id.*

52. *Id.*

53. *See* Payton v. New York, 445 U.S. 573, 585–86 (1980) (quoting United States v. United States District Court, 407 U.S. 297, 313 (1972)).

different interpretations in different jurisdictions. While the Supreme Court's holding in *Payton* certainly clarified the question to an extent, the practical application of the rule remains problematic.[54] The Second Circuit's holding was based in large part on the binding precedent set forth in *Reed*, which the Supreme Court expressly approved, noting that the decision was "persuasive and in accord with this Court's Fourth Amendment decisions."[55] Thus, other circuits should follow the Second Circuit in adopting this rule. The need for uniform application of the Constitution's protections and uniformity in the guidelines provided to law enforcement officers, coupled with the express approval of this rule by the Supreme Court, seems to be strong evidence that this rule should be exclusively adopted.

The Second Circuit's unique interpretation of the *Payton* rule certainly provides practical challenges for law enforcement officers and increases the burden on the judiciary to provide warrants in an efficient and timely manner. However, this approach provides the clearest guidelines for law enforcement. In a time when the police are under strict scrutiny by the public, clear rules and definitive answers are key to eliminating conflict and keeping the peace.

54. *See id.* at 574; *see also, e.g.*, *Allen*, 813 F.3d at 81.
55. *Payton*, 445 U.S. at 588–89; *Allen*, 813 F.3d at 81.